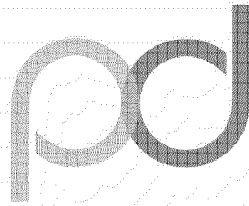


# **EXHIBIT 11**



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## **Transcript of John Martin Lavin**

**Date:** January 5, 2017

**Case:** Corcoran, et al. -v- CVS Pharmacy, Inc.

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Transcript of John Martin Lavin  
Conducted on January 5, 2017

1 (1 to 4)

<p style="text-align: center;">1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA</p> <p>3 Christopher Corcoran, et ) 4 al., ) 5 Plaintiffs, ) 6 v. ) Case No. 3:15-cv-03504-YGR 7 CVS Pharmacy, Inc., ) 8 Defendant. )</p> <p>9</p> <p style="text-align: center;">10 VIDEOTAPED DEPOSITION OF JOHN MARTIN LAVIN</p> <p>11</p> <p style="text-align: center;">12 Phoenix, Arizona 13 January 5, 2017</p> <p>14</p> <p>15 Prepared by: 16 Meri Coash, RMR, CRR 17 Certified Reporter 18 Certification No. 50327</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">3</p> <p>1 Defendant's Email string ending with email 158 2 Exhibit 707 from Paul Hoolihan to Aaron 3 Roesing and Holly Sambora, dated 4 January 12, 2010, 5 Corcoran - CONFIDENTIAL, 6 Caremark-0000829 - 837</p> <p>7</p> <p style="text-align: center;">8 PREVIOUSLY MARKED EXHIBITS</p> <p>9 Exhibit 672 Agreement PCS Health Systems Page 41 10 and CVS Pharmacy dated 11 March 31, 1997</p> <p>12 Exhibit 679 2016 Caremark provider manual Page 58</p> <p>13</p> <p style="text-align: center;">14 INSTRUCTIONS NOT TO ANSWER</p> <p>15 Page 14 Line 3 16 Page 14 Line 8</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p style="text-align: center;">1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 JOHN MARTIN LAVIN</p> <p>4 Examination By Mr. Levine 6</p> <p>5 Examination By Ms. Mainigi 158</p> <p>6 Further Examination By Mr. Levine 165</p> <p>7</p> <p>8</p> <p>9</p> <p style="text-align: center;">10 EXHIBITS MARKED</p> <p>11 EXHIBITS DESCRIPTION PAGE</p> <p>12 Plaintiffs' Declaration of John M. Lavin 15 13 Exhibit 701</p> <p>14 Plaintiffs' 2009 Caremark provider manual 57 15 Exhibit 702</p> <p>16 Plaintiffs' Network Performance October 1, 100 17 Exhibit 703 2008, Troubleshooting Set Price Generic Programs, Caremark-0002102 - 2104</p> <p>18 Plaintiffs' Narrative Onset Price Program 116 19 Exhibit 704</p> <p>20 Plaintiffs' Cash Offering Project Assumptions, 120 21 Exhibit 705 Confidential 09/15/08, Caremark-0002105 - 2108, Confidential</p> <p>22 Plaintiffs' Email from Domenico Gugliuzza to 154 23 Exhibit 706 John Lavin, Thomas Gibbons, John Kirby, Jeffrey Knudson, John Murphy, Dan Rocha, Paul Ferschke, Gregory Sciarra, and Daniel Schmid, dated April 9, 2013, with 24 attachment, CVSC-0317696 - 697 25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">1 VIDEOTAPED DEPOSITION OF JOHN MARTIN LAVIN</p> <p>2 was taken on January 5, 2017, commencing at 8:31 a.m. at 3 the law offices of Galbut &amp; Galbut, PC, Camelback 4 Esplanade, 2425 East Camelback Road, Suite 1020, Phoenix, 5 Arizona, before Meri Coash, a Certified Reporter in the 6 State of Arizona.</p> <p>7</p> <p>8</p> <p>9 * * *</p> <p>10 APPEARANCES:</p> <p>11 For the Plaintiffs: 12 PRITZKER LEVINE, LLP 13 By: Jonathan K. Levine, Esq. 14 180 Grand Avenue Suite 1390 Oakland, California 94612 415-692-0772 jkl@pritzkerlevine.com</p> <p>15 For the Defendants and Deponent: 16 WILLIAMS &amp; CONNOLLY, LLP 17 By: Enu Mainigi, Esq. 18 Colleen McNamara, Esq. 725 Twelfth Street, NW Washington, DC 20005 202-434-5000 emainigi@wc.com cncnamara@wc.com</p> <p>19 Also present: Florence Crisp, Esq.; Thao Pham, 21 Esq.; and Philip Walberer, videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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27 (105 to 108)

<p>105</p> <p>1 And then there were some other, you know, attributes 2 that -- you know, that we've listed down below. Most of 3 them had a situation where once the member enrolled, there 4 was enrollment, eligibility file, and then the -- you 5 know, the pharmacy would send the claim in to that 6 program. And those programs, you know, included -- You 7 know, the first one that I was aware of, I believe, was 8 Walgreens, and then there were others like CV- -- you 9 know, Rite Aid and CVS. And then in comparison was what 10 is stated the standard -- standard set price generic 11 program, and those were programs where the member didn't 12 have to enroll. You went into -- and the -- By far the 13 first and the biggest was Wal-Mart's, and when you walked 14 into a Walmart, everybody you got in there got, that was 15 their everyday low price, and that's what they gave 16 everybody who came to -- and cash customer that came into 17 the program. We considered the standard set program -- 18 that pricing -- the standard set price programs, like the 19 Walmart program, we considered that their usual and 20 customary. For the club programs, we did not consider 21 that part of their usual and customary.</p> <p>22 Q. So this classification that you're referring to 23 in paragraph 14 of your declaration, which has these two 24 types of programs, who at Caremark was involved with 25 making the classification?</p>	<p>107</p> <p>1 Q. When you say "general management," who are you 2 referring to?</p> <p>3 A. Our management of Caremark.</p> <p>4 Q. The people above you?</p> <p>5 A. People who -- people above me and also people in 6 other -- in other parts of the organization.</p> <p>7 Q. Who else did you talk to at -- above you with 8 respect to this issue of the classification of the generic 9 programs?</p> <p>10 A. I don't remember any specifically back in '07 and 11 '08. I don't remember all my specific discussions at that 12 year.</p> <p>13 Q. Well, generally, do you recall any of those 14 discussions with anyone?</p> <p>15 A. Not specifically, no.</p> <p>16 Q. Was the process -- Well, let me ask you this. 17 Is the document that is Exhibit 703 -- is this the final 18 outcome of this process that you've described?</p> <p>19 MS. MAINIGI: Objection.</p> <p>20 A. THE WITNESS: At the time, this was our -- 21 this is -- this is our position, which has been 22 consistent. Across time, across pharmacies, this is our 23 position.</p> <p>24 BY MR. LEVINE:</p> <p>25 Q. Are there -- And was the process itself</p>
<p>106</p> <p>1 A. That was my team, including Brian, myself, Todd 2 Guinn, our supporting legal staff, and then we had input 3 from other -- from our client-facing management teams.</p> <p>4 Q. And when -- when did this class -- when -- when 5 was this classification? When did it occur?</p> <p>6 A. We developed this after -- really it was after 7 the Walgreens -- the Walgreens program came out, because 8 as we had discussions with Walgreens, we had to evaluate 9 it because that was really the first club pro -- plan, 10 using our terminology, that came out. So at that point, 11 we had to evaluate that and make a determination on how we 12 were going to move forward.</p> <p>13 Q. Do you have a more temporal specificity? 2007? 14 2008?</p> <p>15 A. I don't have a specific date, but it was -- be -- 16 you know, it was in -- it was after the Walgreens program 17 came out.</p> <p>18 Q. Did the classification that you settled on 19 require the approval of anyone other than you?</p> <p>20 A. The -- You know, as I stated, we looked at -- 21 you know, I talked -- I worked with our legal team to 22 evaluate that based on our contract, and then secondly, I 23 worked -- we -- you know, worked with our general 24 management as we do with all types of decisions, worked 25 with our -- you know, with our management team.</p>	<p>108</p> <p>1 documented anywhere? I know this is the end result, but 2 is the process memorialized anywhere?</p> <p>3 A. Not that I'm -- like, did we set up a -- I'm 4 sorry. What did -- what do you mean by that did we set up 5 a memorial or something --</p> <p>6 Q. Yeah. Is there -- was there a group -- was there 7 a group tasked with doing this that had minutes -- that 8 prepared minutes, agendas, presentations, or -- or is 9 there a file someplace that contained --</p> <p>10 A. I'm not aware that it was that formal of a 11 process.</p> <p>12 Q. Has Caremark ever conveyed this classification 13 that you referred to to CVS in writing?</p> <p>14 A. I don't remember that specifically. There 15 were -- We had questions from CVS, and pretty much all 16 the chains that created some program, they would call us 17 and ask about our -- our -- you know, how we evaluate the 18 program. And so there may be, but I'm not -- I don't -- 19 off of the top of my head, I don't specifically know.</p> <p>20 Q. So sitting here today, you're not aware of any?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And sitting here today, are you aware of 23 any writing that conveys this classification to any of 24 Caremark's clients?</p> <p>25 A. The -- there was a lot of questions from a lot of</p>

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42 (165 to 168)

<p style="text-align: right;">165</p> <p>1 Q. And would you include that amendment for all the</p> <p>2 times in your declaration you say "set price generic</p> <p>3 program"?</p> <p>4 A. Yes.</p> <p>5 MS. MAINIGI: I have no further questions.</p> <p>6</p> <p>7 FURTHER EXAMINATION</p> <p>8 BY MR. LEVINE:</p> <p>9 Q. The -- Let's go back to Exhibit 707, please.</p> <p>10 You do not appear to be an author or recipient of any of</p> <p>11 the emails. Is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Have you seen this email before sitting here</p> <p>14 today?</p> <p>15 A. I have seen this email before.</p> <p>16 Q. When did you see it last?</p> <p>17 A. I saw it in my preparation --</p> <p>18 Q. Prior to --</p> <p>19 A. -- for my --</p> <p>20 Q. Sorry.</p> <p>21 A. -- for my 30(b) whatever it is. You guys figure</p> <p>22 that out.</p> <p>23 Q. Okay. Had you seen it in 2010?</p> <p>24 A. I am not -- I -- I don't remember seeing this in</p> <p>25 2010.</p>	<p style="text-align: right;">167</p> <p>1 STATE OF ARIZONA )</p> <p>2 COUNTY OF MARICOPA )</p> <p>3 BE IT KNOWN the foregoing deposition was</p> <p>4 taken by me pursuant to stipulation of counsel; that I was</p> <p>5 then and there a Certified Reporter of the State of</p> <p>6 Arizona, and by virtue thereof authorized to administer an</p> <p>7 oath; that the witness before testifying was duly sworn by</p> <p>8 me to testify to the whole truth; notice was provided that</p> <p>9 the transcript was available for signature by the</p> <p>10 deponent; that the questions propounded by counsel and the</p> <p>11 answers of the witness thereto were taken down by me in</p> <p>12 shorthand and thereafter transcribed into typewriting</p> <p>13 under my direction; that the foregoing pages are a full,</p> <p>14 true, and accurate transcript of all proceedings and</p> <p>15 testimony had and adduced upon the taking of said</p> <p>16 deposition, all to the best of my skill and ability.</p> <p>17 I FURTHER CERTIFY that I am in no way related to</p> <p>18 nor employed by any parties hereto nor am I in any way</p> <p>19 interested in the outcome hereof.</p> <p>20 DATED at Phoenix, Arizona, this 6th day of</p> <p>21 January, 2017.</p> <p>22</p> <p>23 <u>Meri Coash</u></p> <p>24 Meri Coash, RMR, CRR</p> <p>25 Certified Reporter #50327</p>
<p style="text-align: right;">166</p> <p>1 Q. Okay. So would you agree with me that all of the</p> <p>2 individuals for whom this was from, to, or cc'd are</p> <p>3 Caremark employees?</p> <p>4 A. Yes.</p> <p>5 Q. All right. So this document never left Caremark?</p> <p>6 A. This email was an internal email.</p> <p>7 MR. LEVINE: All right. All right. So</p> <p>8 we're going to switch hats and --</p> <p>9 THE VIDEOGRAPHER: Do you want me to end</p> <p>10 this one?</p> <p>11 MR. LEVINE: Well, I don't know. Do we need</p> <p>12 a separate tape?</p> <p>13 MS. MAINIGI: I would do a separate tape.</p> <p>14 MR. LEVINE: Okay.</p> <p>15 THE VIDEOGRAPHER: This marks the end of the</p> <p>16 deposition of John Lavin. We are going off the record at</p> <p>17 2:07 p.m.</p> <p>18 (The deposition was concluded at 2:07 p.m.)</p> <p>19</p> <p>20 _____</p> <p>21 JOHN MARTIN LAVIN</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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